



Republic of the Philippines
Supreme Court
Manila

EN BANC

RAZUL K. ABPI,

Petitioner,

G.R. No. 252367

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GISMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN, JJ.

- versus -

COMMISSION ON AUDIT,

Respondent.

Promulgated:

July 14, 2020

X-----X

RESOLUTION

DELOS SANTOS, J.:

The Case

This Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court seeks the reversal of the Decision² dated 19 October 2016

¹ *Rollo*, pp. 3-21.

² *Id.* at 26-29; COA Decision No. 2016-297.

and the Resolution³ dated 29 January 2020 rendered by the Commission on Audit (COA). The assailed Decision and Resolution sustained the Notices of Disallowances⁴ (NDs) issued to Razul K. Abpi (petitioner) totaling to ₱846,536,603.80 incurred during his tenure as Caretaker of Department of Public Works and Highways-Autonomous Region in Muslim Mindanao (DPWH-ARMM).

The Facts

Before his retirement in 2012,⁵ petitioner concurrently held the positions of Provincial Engineer of Maguindanao⁶ and DPWH-ARMM Caretaker as of 03 October 2005.⁷

In 2010, the COA created a Special Audit Team (SAT) to assess the propriety of the accounting and utilization of funds, and the efficiency and effectiveness of project implementation of DPWH-ARMM from January 2008 to December 2009.⁸ The audit concluded that the funds received by DPWH-ARMM were not properly recorded, utilized, and managed in accordance with prevailing law, rules, and regulations. The SAT detailed their findings in Special Audits Office (SAO) Report No. 2010-05⁹ covering transactions involving the procurement of construction materials, construction/rehabilitation of various farm to market roads, utilization of cash advances, and payments to *pakyaw* labor contractors and suppliers/contractors. In view of the numerous anomalies discovered, SAT issued sixteen (16) NDs¹⁰ where petitioner is included as one of the individuals being held accountable. In the case of petitioner, his inclusion in the NDs resulted from, among others, his role as the approving officer insofar as he: (1) signed disbursement vouchers, purchase orders, requisition and issuance slips in spite of the absence of supporting documents; (2) awarded contracts which were not subjected to public bidding; and (3) certified in certificates of completion to the effect that projects were constructed in accordance with the plans and specifications but in actuality, had evident deficiencies.

On 14 June 2013, petitioner filed an Appeal Memorandum and Motion for Exclusion¹¹ with the Office of the SAO Director to assail the audit findings which formed the basis of the 16 NDs. In his defense, petitioner asserted, among others, that he acted in good faith when he relied

³ Id. at 30-34; COA Decision No. 2020-175.

⁴ Id. at 165-249.

⁵ Id. at 334.

⁶ Id. at 5; Petitioner was appointed as Provincial Engineer in July 2002.

⁷ Id.; Petitioner was appointed as Caretaker of DPWH-ARMM on 03 October 2005 under Office Order No. 2010-531, Series of 2005 by Regional Governor Zaldy Ampatuan.

⁸ Id. at 40.

⁹ Id. at 36-164.

¹⁰ Id. at 165-249.

¹¹ Id. at 250-271.

on the certifications and recommendations of his subordinates and maintained that the presumption of regularity in the performance of official duties was applicable. Insofar as his signature was found in the questioned documents, he claimed that he was merely performing a ministerial duty which should not make him personally liable.¹²

On 23 May 2013, the SAO denied petitioner's appeal in SAO Decision No. 2013-00.¹³ In so ruling, Director Susan P. Garcia reiterated the findings in SAO Report No. 2010-05 and detailed petitioner's participation in each ND for which he was being held accountable. It was ruled that petitioner's participation in the questioned transactions could not be considered ministerial, considering that the deficiencies in the documents were clearly apparent. As the designated Caretaker of DPWH-ARMM, he was primarily responsible under Section 102 of Presidential Decree No. 1445¹⁴ for all funds and property of DPWH-ARMM.

On 04 July 2013, petitioner filed a Petition for Review with Motion for Exclusion from the Persons Liable¹⁵ with the COA Commission Proper.

Ruling by the Commission Proper

On 19 October 2016, the COA rendered COA Decision No. 2016-297¹⁶ (assailed Decision), the dispositive portion of which reads:

WHEREFORE, premises considered, the petition for review with motion for exclusion of Mr. Razul K. Abpi, Caretaker, Department of Public Works and Highways-Autonomous Region in Muslim Mindanao, is hereby **DISMISSED** for having been filed out of time. Accordingly, Special Audit Office (SAO) Decision No. 2013-001 dated May 23, 2013, which affirmed SAO Notice of Disallowance Nos. DPWH-11-001-101-(09), 11-006-101-(09), 11-016-101-(09), DPWH-11-002 to 005-101-(08 & 09), 11-009 to 010-101-(08 & 09), 11-013-101-(08 & 09), 11-015-101-(08 & 09), and DPWH-11-007 to 008-101-(08), 11-011 to 012-101-(08), and 11-014-101-(08), all dated August 26, 2011, in the total amount of ₱846,536,603.80, is **FINAL and EXECUTORY**.¹⁷

The assailed Decision dismissed the petition for review for being belatedly filed. This notwithstanding, the COA held that the appeal would still be

¹² Id. at 267.

¹³ Penned by Director IV Susan P. Garcia; id. at 272-284.

¹⁴ Ordaining and Instituting A Government Auditing Code of the Philippines, Presidential Decree No. 1445 [Government Auditing Code of the Philippines] (1978).

Section 102. Primary and secondary responsibility.

(1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible.

¹⁵ *Rollo*, pp. 285-305.

¹⁶ Id. at 26-29.

¹⁷ Id. at 28.

denied for lack of legal and factual basis. In a *Separate Opinion*¹⁸ penned by COA Chairperson Michael Aguinaldo, despite the denial of the petition for review, he averred that the amount of disallowance may be reduced by the reasonable value of any materials actually delivered, or work actually completed which actually benefitted the government as held in *Melchor v. Commission on Audit*.¹⁹

On 28 February 2018, a Notice of Finality of Decision (NFD) No. 2018-038²⁰ was issued stating that the assailed Decision had become final and executory.

Aggrieved, petitioner moved for reconsideration *via* an Omnibus Motion to Lift Finality of Decision, Reconsideration, and Exclusion from Persons Liable.²¹ On 29 January 2020, the COA issued the assailed Resolution²² denying the same. The COA maintained that the petition for review was belatedly filed and upheld the audit findings of SAT which it held was sufficient to warrant a conclusion that the transactions subject of the NDs were spurious and irregular. Finally, the COA ruled that petitioner could not invoke *Arias v. Sandiganbayan*²³ to anchor his exclusion from liability. Rather than a mere approving authority, petitioner directly participated in the procedure leading to the consummation of the disallowed transactions.

The Issues

- I. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the notices of disallowances based on [an] incomplete audit.
- II. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed petitioner's liability for the notices of disallowances.

The Court's Ruling

The Petition for *Certiorari* is denied for: (a) being filed out of time; (b) defective verification and certification against forum shopping; and (c) failure to show grave abuse of discretion on the part of the COA.

¹⁸ Id. at 35.

¹⁹ 277 Phil. 801 (1991).

²⁰ *Rollo*, pp. 314-316.

²¹ Id. at 317-331.

²² Id. at 30-34.

²³ 259 Phil. 794 (1989).

The Court has time and again ruled that the belated filing of a petition for *certiorari* under Rule 64 is fatal. As explained in *Binga Hydroelectric Plant, Inc. v. Commission on Audit*:²⁴

*We have said previously that the belated filing of a petition for certiorari under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.*²⁵

Section 3, Rule 64 of the Rules of Court provides that the petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Petitioner reckoned the reglementary period to appeal the assailed Decision to the Court from his receipt of the assailed Resolution on 10 March 2020.²⁶ This is erroneous because the 30-day period commenced upon receipt of the assailed Decision and was merely interrupted by the filing of the omnibus motion. Since petitioner received a copy of the assailed Decision on 09 November 2018 and filed an omnibus motion on 19 November 2018, petitioner had 20 days within which to file a petition for *certiorari*. On 10 March 2020,²⁷ petitioner received a copy of the assailed Resolution. Thus, another five (5) days passed, *i.e.*, 15 days remained before the Supreme Court issued Administrative Circular No. 31-2020²⁸ on 16 March 2020 providing for an extension of 30 calendar days to be counted

²⁴ G.R. No. 218721, 10 July 2018.

²⁵ *Id.* (Emphasis supplied)

²⁶ *Rollo*, p. 4.

²⁷ *Id.*

²⁸ Supreme Court Administrative Circular No 31-2020 dated 16 March 2020 Re: Rising Cases of COVID-19.

x x x x

6. The filing of petitions and appeals, complaints, motions, pleadings, and other court submission that fall due during the period from 15 March 2020 until 15 April 2020 is EXTENDED for THIRTY (30) calendar days counted from 16 April 2020. However, those who prefer to file the said pleadings within the reglementary period without need of the extension granted may do so by facsimile or by transmitting them through electronic means, if available. x x x

from 16 April 2020 for petitions that fall due from 15 March 2020 to 15 April 2020.

Applying the foregoing, the last day of filing of a Petition for *Certiorari* falls on 18 May 2020.²⁹ However, petitioner only filed his Petition for *Certiorari* on 26 June 2020³⁰ or 39 days after the last day for filing. The records are bereft of any showing that petitioner either filed a motion for extension of time or proffered any compelling reason in the Petition to warrant the relaxation of procedural rules.

Moreover, a *certiorari* petition filed under Rule 64 of the Rules of Court must be verified³¹ and accompanied by a certification against forum-shopping.³² Notably, attached to the Petition for *Certiorari* is a Manifestation³³ by undersigned counsel of petitioner to the effect that the Verification and Certification against Forum-Shopping is a mere photocopy and undertakes to submit the original within three (3) days upon receipt. Records reveal that this has yet to be complied with. While verification is a formal rather than jurisdictional requirement and thus, its absence is not detrimental to a petition; the absence or a defect in the execution of a certification against forum shopping is generally not curable by the submission thereof after the filing of the petition.³⁴ Section 5, Rule 64 of the Rules of Court states that the failure of the petitioner to comply with the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Even if the Court were to disregard these procedural infirmities, the Petition would nonetheless be dismissed.

Grave abuse of discretion on the part of the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.³⁵ Thus, it is incumbent upon petitioner to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. After a judicious study of the case, the Court finds that petitioner has failed in this regard. As will be further discussed below, the COA acted in accordance with the law, rules, and regulations in denying the Petition for Review and consequently, sustaining the NDs issued against petitioner.

²⁹ 30 calendar days from 16 April 2020 is 16 May 2020, a Saturday.

³⁰ *Rollo*, p. 3.

³¹ *Vallacar Transit, Inc. v. Catubig*, 664 Phil. 529, 540-541 (2011).

³² Rules of Court, Rule 64, Sec. 5.

³³ *Rollo*, p. 20.

³⁴ *Jacinto v. Gumaru, Jr.*, 734 Phil. 685, 696 (2014).

³⁵ *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97, 107 (2015).

Under Section 4, Rule V³⁶ of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC), an appeal to the Director must be filed within six (6) months after receipt of the decision appealed from. However, this must be read in conjunction with Section 3 of Rule VII of the RRPC which is emphatic that an appeal with the Commission Proper should be filed within the time remaining of the six month reglementary period, thus:

Section 3. Period of Appeal.- The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

In the case of petitioner, the entire six (6) month period to appeal from the Office of the SAO Director and the Commission Proper had already lapsed even before the filing of the Petition for Review before the COA. Records show that petitioner received the NDs on 06 December 2011.³⁷ Petitioner filed his Appeal Memorandum on 04 June 2012,³⁸ or after 180 days, which is within the six (6) months period prescribed. On 23 May 2013, the Office of the SAO Director denied the appeal on the merits in SAO Decision No. 2013-001, a copy of which was received by petitioner on 24 June 2013.³⁹ On 04 July 2013, or after ten days from receipt thereof, petitioner filed a Petition for Review with the Commission Proper.⁴⁰

It is clear that petitioner filed the Petition for Review beyond the reglementary period which is within six (6) months or 180 days after receipt of copies of the NDS. Thus, SAO Decision No. 2013-001, upholding the validity of the NDs, became final and executory in accordance with Section 51⁴¹ of the Government Auditing Code of the Philippines and Section 3, Rule X⁴² of the RRPC.

Even if this Court were to disregard the belated filing of the Petition for Review, it bears stressing that petitioner has not successfully shown that the COA acted with grave abuse of discretion in sustaining the NDs and holding him liable therefor.

³⁶ Rule V Proceedings Before the Director.

³⁷ *Rollo*, p. 253. Petitioner admitted receipt of the copies of the Notices of Disallowance on 06 December 2011 in his Appeal Memorandum dated 28 May 2012. Moreover, petitioner affixed his signature on each Notice of Disallowance, and beside it the date 12/6/11.

³⁸ *Id.* at 27.

³⁹ *Id.* at 285.

⁴⁰ *Id.*

⁴¹ Section 51. *Finality of decisions of the Commission or any auditor.* - A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

⁴² Section 13. *Entry of Decision.* - If no appeal is filed within the time provided in these rules, the decision of the Commission shall be entered by the Commission Secretary in the Docket which shall contain the dispositive part of the decision and shall be signed by the Secretary with a certificate that such decision has become final and executory. Such recording of the decision shall constitute the entry.

At the onset, factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.⁴³ As explained in *Maritime Industry Authority v. Commission on Audit*,⁴⁴ not all errors of the Commission on Audit is reviewable by this Court, thus:

A Rule 65 petition is a unique and special rule because it commands limited review of the question raised. As an *extraordinary remedy*, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The limitation of the Court's power of review over COA rulings merely complements its nature as an *independent constitutional body* that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.⁴⁵

Guided by these juridical pronouncements, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce.⁴⁶ While the assailed Decision and Resolution refrained from discussing at length the findings of the SAO upon which liability on petitioner is imposed; reference to the SAO Decision and SAO Report, from which the SAO Decision is based, reveals that there was factual and legal basis why the flagged transactions were deemed irregular and correspondingly, petitioner's involvement therein. Section 5, Rule 64 of the Rules of Court states that the findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. It bears to note that the nature of petitioner's participation and/or involvement in the questioned transactions subject of the 16 NDs were specified individually yet petitioner focused his arguments on a general discussion rather than directing his averments to the specific audit findings. Needless to state, each transaction is attended by its own peculiarities and it is incumbent upon petitioner to address them in point. Petitioner has not established that the COA's findings and conclusions fall short of required quantum of proof.

⁴³ *Lumayna v. Commission on Audit*, 616 Phil. 929, 940 (2009).

⁴⁴ 750 Phil. 288 (2015).


⁴⁵ Id. at 307-308. (Emphasis and italics in the original)

⁴⁶ Id. at 308.

Finally, petitioner's failure to seasonably file a Petition for Review before the COA of SAO Decision No. 2013-001 which affirmed the NDs affixing petitioner's liability, rendered the same final and executory. Under the doctrine of finality and immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and even if the modification is made by the court that rendered it or by the Highest Court of the land.⁴⁷

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The assailed Decision dated 19 October 2016 and the Resolution dated 29 January 2020 of the respondent Commission on Audit are **AFFIRMED**.

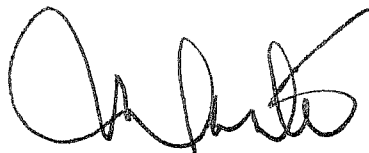
SO ORDERED.



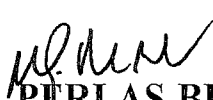
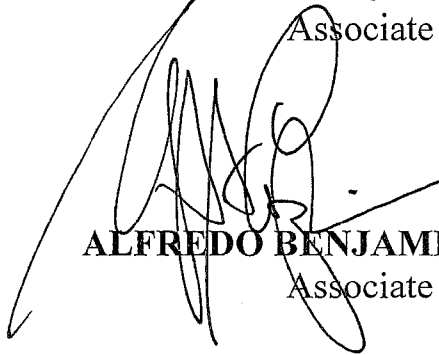
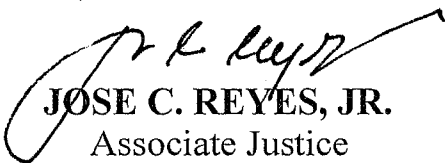
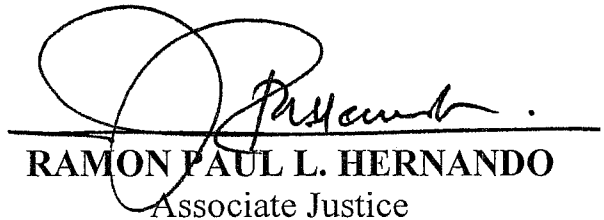
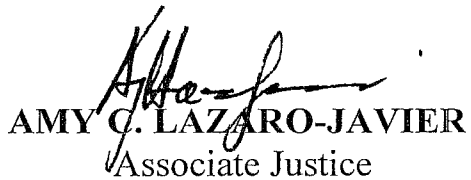
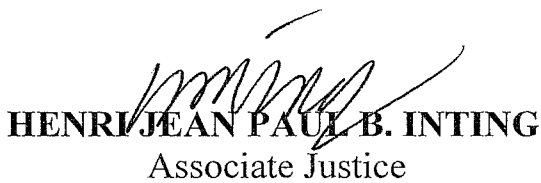
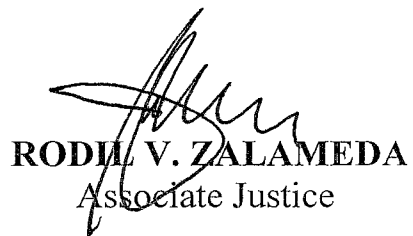
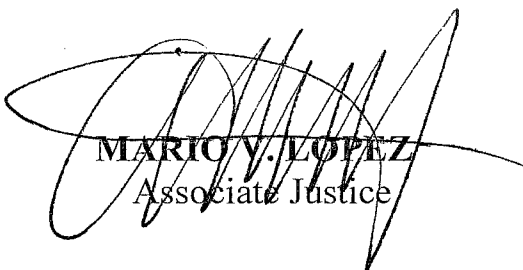
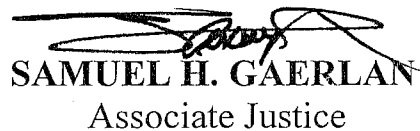
EDGARDO L. DELOS SANTOS
Associate Justice

⁴⁷ *Roy III v. Herbosa*, 800 Phil. 459, 527 (2016).

WE CONCUR:

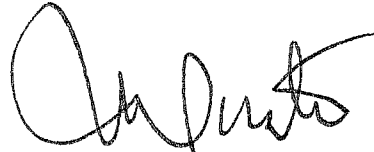


DIOSDADO M. PERALTA
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice
MARVIC M.V.F. LEONEN
Associate Justice
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
ALEXANDER G. GESMUNDO
Associate Justice
JOSE C. REYES, JR.
Associate Justice
RAMON PAUL L. HERNANDO
Associate Justice
ROSMARI D. CARANDANG
Associate Justice
AMY C. LAZARO-JAVIER
Associate Justice
HENRI JEAN PAUL B. INTING
Associate Justice
RODIL V. ZALAMEDA
Associate Justice
MARIO V. LOPEZ
Associate Justice
SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice